

REMARKS OF SELECTED DELEGATES AT CARACAS

VOLUME III

Pollution, Scientific Research,
Land-Locked States, and Dispute Settlement

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*See Topical Files (Marine Pollution)
for complete text.*

Group of 17 Draft

Article IV.

1. States, acting in particular through the appropriate international and regional organizations, shall establish and adopt international standards for the prevention and control of pollution of the marine environment from land-based sources.

2. States shall individually establish national regulations for the prevention and control of such pollution.

3. Measures taken pursuant to this Article shall take into account available scientific evidence, other relevant factors, the work of competent international bodies, and international standards as may be elaborated within a regional framework.

Article V.

With respect to marine pollution arising in connection with seabed activities and installations under the jurisdiction of the coastal State pursuant to Chapter _____:

1. States, acting in particular through the competent international organizations, shall establish, as soon as possible, international regulations to prevent and control pollution.

2. Coastal States may also establish additional or more stringent regulations for this purpose, and may cooperate through regional arrangements in that regard.

3. Coastal States shall ensure compliance with the regulations established pursuant to this Article.

Article VII.

States, acting through the competent international organization, shall establish, as soon as possible and to the extent that they are not already in existence, international regulations for the prevention of pollution from vessels.

Article VII. bis

Coastal States may establish regulations for vessels within their territorial sea pertaining to the preservation of the marine environment except in straits used for international navigation.* Such regulations may relate only to discharges from vessels and may not to the extent that they are additional to or more stringent than internationally agreed regulations, have the effect of requiring design, construction, manning or equipment changes for foreign vessels.

Article VII. bis
** Crossing to Part III*
Article VII. bis
** Some delegations felt that all questions regarding the rights and obligations of States in respect of straits transit should be negotiated in the Second Committee.*

Article VI⁹¹.

(Several co-sponsors believe that provisions should be negotiated at the next session to deal with the particular problems of vulnerable areas of the marine environment and have proposed particular texts in this regard. However, since this important concept has not been fully discussed either in the Committee or between delegations, it seemed premature to include a specific treaty text in these Articles at this time.)

Article IX.

1. States shall ensure compliance with international regulations for the protection of the marine environment applicable in accordance with the provisions of this Convention by vessels registered in their territory or flying their flag. Flag States may apply regulations additional to or more stringent than the international regulations to vessels registered in their territory or flying their flag.

2. Flag States shall provide in their legislation for effective enforcement in respect of violations of such regulations, irrespective of where the violation may have occurred.

3. At the documented request of a State, the flag State shall investigate any violation allegedly committed by its vessels. When satisfied that sufficient evidence is available to enable proceedings to be brought in respect of the alleged violation, the flag State shall cause such proceedings to be taken as soon as possible, in accordance with its law. The flag State shall promptly inform the requesting State of the action taken.

4. Sanctions provided under flag State legislation shall be adequate in severity to discourage violations, and shall be equally severe irrespective of where the violation may have occurred.

Article X.

1. With respect to a vessel in one of its ports or offshore terminals, a port State shall, upon receipt of information from another State indicating that the vessel has violated the international standards within the previous [six months], undertake an immediate and thorough investigation of the alleged violation. The port State shall promptly inform the flag State, and the State which provided information, of the results of the investigation.

[2.] In respect of violations of the international discharge standards which occur beyond the area of coastal State enforcement jurisdiction as defined in Article XI bis, a port State may take enforcement action, provided:

(a) that only monetary fines or penalties may be imposed;

(b) that proceedings are commenced within [] months of the alleged violation;

(c) that whenever one port State has commenced such proceedings, no other action in respect of the same occurrence may be taken except by the flag State;

[d] that the port State may not take proceedings except with regard to releasing the vessel under bond or other reasonable procedures, until] months have elapsed from the date of its report to the flag State; and that no further port State proceedings may be taken if the flag State has commenced and does not discontinue proceedings.

(e) that when a port State takes proceedings it shall promptly notify the flag State of the vessel and any State which has provided information regarding the violation and shall, in due course, forward the results;

[f] that the violation has caused damage to the port State or that a request is received from the competent international organization.

Article X

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3. In respect of violations of the international or applicable national¹ discharge standards which occur within the area of coastal State enforcement jurisdiction as defined in Article XI bis, or which cause damage to another coastal State, a port State may take enforcement action upon request of the coastal State. Such action shall be subject to the provisions of subparagraphs (a), (b), (c), (d) and (e) of paragraph 2 of this article.⁷

Article XI.

Coastal States may enforce regulations applicable in accordance with this Chapter for vessels within their territorial sea pertaining to the preservation of the marine environment [except in straits used for international navigation].^{*} With respect to vessels in innocent passage, such enforcement may relate only to discharge regulations and not to regulations concerning design, construction, manning or equipment.

^{*}Some delegations felt that all questions regarding the rights and obligations of States in respect of straits transit should be negotiated in the Second Committee..

11. In a zone off its coast beyond the territorial sea extending to a maximum of _____ miles from the baseline of the territorial sea, the coastal State may 1arrest the vessel and take proceedings or take the following measures, using authorized vessels and aircraft, when it has reasonable grounds for believing that a vessel has violated the internationally-agreed discharge regulations:

(a) It may require the vessel to give information by radio regarding its identification, next ports of call, its internationally-required certification, and other information directly related to the violation.

(b) If necessary to obtain further information to confirm the violation, the coastal State may require the vessel to stop and may board it for purposes of inspection and investigation.

(c) The coastal State may examine any internationally-required certificates and records and, if necessary to confirm the violation, may carry out a physical inspection with regard to the alleged violation. 7

12. The coastal State shall inform the flag State, and may inform one of the next ports of call of the vessel, of the results of its inspection and investigation and any proceedings taken. 7 7

13. The coastal State may not take proceedings, except with regard to releasing the vessel under bond or other reasonable procedures, until three months have elapsed from this date of its report to the flag State, and no further coastal State proceedings may be taken if the flag State has commenced and does not discontinue proceedings. 7

Article XII. *Article XII. Investigation.*

1. A State shall not delay a foreign vessel longer than is essential for purposes of investigation and shall promptly release the vessel if the investigation does not reveal a violation of the applicable regulations. If the investigation reveals a possible violation and an arrest has taken place pursuant to these Articles, the State shall promptly release the vessel under bonding or other reasonable procedures, except where such release would present an unreasonable threat of harm to the marine environment. That State may, however, release the vessel for the purpose of proceeding to the nearest appropriate repair yard available.

2. A State shall be required to pay compensation for damage or loss resulting from inspection, investigation or enforcement measures exceeding those reasonably necessary in the light of available information.*

3. In taking measures pursuant to these Articles, States shall not endanger vessels or create hazards to the marine environment.

4. After taking measures pursuant to these Articles, a State shall immediately inform the consul or diplomatic representative of the flag State of the measures taken.

*The view was also expressed that the dispute settlement procedures of this Convention should include a right for vessel owners to initiate actions for compensation.

4. The coastal State shall notify the flag State of any proceedings taken and of their result.

5. No proceedings may be taken after three years have elapsed from the date of the alleged violation.

6. No other State, except the flag State of the vessel, may take proceedings with regard to the same occurrence if proceedings have been taken by a coastal State.

7. Only monetary fines or penalties may be imposed by the coastal State.7

Article XII. bis

In the exercise of its rights and duties under these Articles, a State shall not discriminate in form or in fact against foreign vessels.

Article XIII.

This Chapter 'shall' not apply to any warship, naval auxiliary or other ship or aircraft owned or operated by a State and used, for the time being, only on government non-commercial service. However, each State shall ensure by the adoption of appropriate measures not impairing the operations or operational capabilities of such ships or aircraft owned or operated by it, that such ships and aircraft act in a manner consistent, so far as is reasonable and practicable, with this Chapter.

Article XIV.

Any dispute concerning the interpretation or application
of this Chapter shall be settled in accordance with Chapter _____
of this Convention.

AFGHANISTAN

ALBANIA

ALGERIA

ARGENTINA

AUSTRALIA

AUSTRIA 19

BAHAMAS

BAHRAIN

BANGLADESH

BARBADOS

BELGIUM 19

BHUTAN

BOLIVIA 19

BOTSWANA 19

BRAZIL 12, 14/Add. 1

BULGARIA

BURMA

BURUNDI

CAMEROON

CANADA 13, 14/Add. 1

CENTRAL AFRICAN
REPUBLIC

CHAD

CHILE

CHINA

People's Rep. of

COLOMBIA 13, 14/Add. 1

CONGO

COSTA RICA

CUBA

CYPRUS

CZECHOSLOVAKIA

DAHOMEY

DENMARK 19

DOMINICAN REPUBLIC

ECUADOR 72

EGYPT 12, 14/Add. 1

EL SALVADOR

EQUATORIAL GUINEA

ETHIOPIA

FIJI 6

FINLAND

FRANCE 14/Add. 1

GABON

GAMBIA

GHANA 6

GERMANY 14/Add. 1
Democratic Rep. ofGERMANY
Federal Rep. of 1, 14, 14/Add. 1

GREECE 4, 14/Add. 1

GUATEMALA

GUINEA

GUINEA-BISSAU

GUYANA 6, 14/Add. 1

HAITI

HOLY SEE

HONDURAS

HUNGARY

ICELAND 6

INDIA 6, 14/Add. 1

INDONESIA

IRAN 6, 12, 14/Add. 1

IRAQ

IRELAND

ISRAEL 5, 14/Add. 1

ITALY 14/Add. 1

IVORY COAST

JAMAICA

JAPAN

JORDAN

KENYA 2, 14/Add. 1

KHMER REPUBLIC

KOREA

Republic of

KOREA

People's Rep. of

KUWAIT

LAOS 19

LEBANON

LESOTHO 19

LIBERIA 10, 19

LIBYAN ARAB REP.

LICHTENSTEIN

LUXEMBOURG 19

MADAGASCAR

MALAWI

MALAYSIA

MALDIVES

MALI

MALTA

MAURITANIA

MAURITIUS

MEXICO 12

MONACO

MONGOLIA

MOROCCO 12

NAURU

NEPAL 19

NETHERLANDS 19

NEW ZEALAND 6

NICARAGUA

NIGER

NIGERIA 8, 12

NORWAY 18

OMAN 12

PAKISTAN 12

PANAMA

PARAGUAY 19

PERU 12

PHILIPPINES 6

POLAND

PORTUGAL

QATAR

ROMANIA 14/Add. 1

RWANDA

SAN MARINO

SAUDI ARABIA

SENEGAL 12

SIERRA LEONE

SINGAPORE 19

SOMALIA 12

SOUTH AFRICA

SPAIN 6, 14/Add. 1

SRI LANKA 12

SUDAN

SWAZILAND

SWEDEN 14/Add. 1

SWITZERLAND

SYRIAN ARAB REP.

TANZANIA

THAILAND

TOGO

TONGA

TRINIDAD & TOBAGO 9, 12, 14/Add. 1

TUNISIA 12, 14/Add. 1,

TURKEY

UGANDA 19

UNITED ARAB EMIRATES

UNITED KINGDOM 14/Add. 1

UNITED STATES 14/Add. 1

UPPER VOLTA 19

URUGUAY 12

USSR 14/Add. 1

BYELORUSSIAN SSR

UKRAINIAN SSR

VENEZUELA 12, 14/Add. 1

VIETNAM
Republic ofVIETNAM
Democratic Rep. of

WESTERN SAMOA

YEMEN (Aden)

YEMEN (Sana)

YUGOSLAVIA 12

ZAIRE

ZAMBIA 19